IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No. 2705 of 2007
Date of decision: December 03, 2007

Roshan Lal and others.

.....APPELLANTS

Versus

Ram Niwas and another.

.....RESPONDENTS

CORUM: **HON'BLE MR JUSTICE T.P.S.MANN**

PRESENT: Mr Arun Jain, Advocate
for the appellants.

T.P.S.MANN, J.

The plaintiffs have filed the present second appeal under Section 100 of the Code of Civil Procedure against the judgment dated 19.3.2007, passed by Civil Judge (Jr. Division), Gurgaon, whereby their suit for permanent injunction was dismissed and the counter-claim of the defendants was decreed and also the order dated 12.5.2007 passed by Additional District Judge, Gurgaon dismissing their appeal against the aforementioned judgment.

The plaintiffs claimed themselves to be owners in possession of a residential house, situated within the Municipal limits of Farrukh Nagar. They received the said property from their father through a decree dated 18.10.1991, who had purchased it from one Paras Ram vide sale deed dated 6.11.1961 for a consideration of Rs.40/-. The defendants

had an eye upon the property of the plaintiffs and they threatened to take possession of the same forcibly, besides removing the walls, which had been constructed by the father of the plaintiffs and to which the defendants had no right. Accordingly, a suit for permanent injunction was filed.

The defendants opposed the suit by asserting that the plaintiffs were not owners of the suit property, rather they claimed themselves to be owners of the same. Earlier to the defendants, it was Deen Dayal, who was owner in possession of the suit property. After his death, the defendants and their mother Smt. Bhagwati Devi inherited the suit property. The property stood in the name of their mother Smt. Bhagwati Devi, as recorded in the house tax assessment register, with mutual consent of the defendants and their brother Bhim Sain. After the death of Smt. Bhagwati Devi, the defendants inherited the suit property. The suit property was given as licencee to Ganga Ram, father of the plaintiffs by Ram Niwas-defendant and his mother Smt. Bhagwati Devi as he had come to Farrukh Nagar from Village Wazirpur. Said Ganga Ram was never owner of the suit property. The plaintiffs were in un-authorised possession of the suit property. In fact, Ganga Ram had managed to get himself recorded as tenant in the house tax assessment register for the year 1988-89 at the back of the defendants, although he was only a liceneee. The decree dated 18.10.1991 vide which the plaintiffs claimed to have received the suit property from their father was collusive and illegal and not bindings on the defendants. It had been

suffered by Ganga Ram in order to deprive the defendants of their ownership over the suit property. The defendants also filed counter-claim to seek the possession of the suit property.

The main controversy between the parties revolved around the identity of Ganga Ram-father of the plaintiffs. Though the defendants claimed that the suit land was given to Ganga Ram as a licencee by Smt. Bhagwati Devi, widow of Deen Dayal, yet the plaintiffs claimed that Ganga Ram was not inducted as licencee by Smt. Bhagwati Devi, widow of Deen Dayal, but it was one Ganga Sahai, who was inducted as such and therefore, it could not be said that it was Ganga Ram, father of the plaintiffs, who was the licencee. On the other hand, Ganga Ram, father of the plaintiffs, had purchased the property in question from Paras Ram on 6.11.1961 by way of a sale deed and transferred the same to the plaintiffs by way of a decree dated 18.10.1991.

There is sufficient evidence on the file from which it is established that Ganga Ram and Ganga Sahai are not two different persons, but one person, who is known by both the names of Ganga Ram and Ganga Sahai.

The plaintiff relied upon various documents like pension book, the statement of account, service certificate, notification of joint family pension, identity card, ration card and life insurance policies to establish that their father was already described by the name of Ganga

Ram and never known as Ganga Sahai. However, we have another document on record in the shape of sale deed Ex.DW8/1 executed by the father of the plaintiff wherein he is described as Ganga Ram @ Ganga Sahai. Similar position is depicted by an affidavit Ex.DW8/2 executed by him. In the electoral list Ex.DW6/1, the plaintiffs are described as sons of Ganga Sahai and their father also mentioned as Ganga Sahai. The various documents relied upon by the plaintiff were not formally proved on the file, rather they were tendered by them. In view of the above, these documents cannot be given any weightage. Rather, the documents duly brought on the record by the defendants conclusively establish that Ganga Ram and Ganga Sahai are not two persons but two names of one and same person who is father of the plaintiff.

Moreover, the plaintiffs are not sure about their actual claim in regard to the suit property. To begin with, they pleaded in para-2 of the plaint that it was their ancestral property. It was also stated that their father had purchased the suit property vide sale deed dated 7.11.1961 for a consideration of Rs.40/-. However, when the time came for them to reply to the counter-claim set up by the defendants, they came with a plea that they were in possession of the suit property for a long and the same had ripened into ownership by way of adverse possession.

On the other hand, the defendants have been successful in establishing that the disputed land was given to Ganga Ram as a licencee by Smt. Bhagwati Devi, widow of Deen Dayal. The statements of DW-1

to DW-4 have rightly been relied upon by the learned lower Courts.

In view of the above, no case is made out for interference in the concurrent findings of facts arrived at by the learned lower Courts, whereby the suit was dismissed and the counter-claim was allowed. No such substantial question of law, as claimed by the appellants arises for determination in the present appeal. The same is, accordingly, dismissed.

December 03, 2007 **(T.P.S.MANN)**
Pds. **JUDGE**